

Revised 1/2005

Suggested Form D106

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

In Re: \_\_\_\_\_

NANODYNAMICS, INC.

Debtor(s).  
\_\_\_\_\_

MARK S. WALLACH, TRUSTEE

Plaintiff (s),

vs.

**ORDER TO TRANSMIT  
RECORD TO DISTRICT  
COURT COMBINED WITH  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDATION  
REGARDING PLAINTIFF'S  
REQUEST FOR ENTRY  
OF JUDGMENT BY DEFAULT  
(Non-Core Proceeding)**

BK Case No. 09-13438KAP Case No. 10-01007K

SGK NANOSTRUCTURES  
INCORPORATED  
DK INVESTORS, INC.

Defendant (s).  
\_\_\_\_\_

The Clerk of Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984).

**TO THE DISTRICT COURT:**

Having examined the record in this Adversary Proceeding and having found it to be a Non-Core Proceeding, the Bankruptcy Court is without authority to enter a final or dispositive Order or Judgment. (See, 28 U.S.C. § 157(c)). Plaintiff has requested entry of Judgment by Default against Defendant, \_\_\_\_\_ SGK Nanostructures Incorporated ("Defendant"), which *has not defended. Another Defendant has Answered.* *msc*

~~This Court has determined that:~~

☒ No hearing was necessary.

☐ A hearing was necessary, which hearing was held on \_\_\_\_\_ at \_\_\_\_\_, on notice to \_\_\_\_\_ at which hearing there appeared \_\_\_\_\_ who was heard.

### FINDINGS

This Court now finds that the Complaint was filed by the Plaintiff on January 27, 2010; that an Affidavit of Service was filed attesting to service of the Summons and a copy of the Complaint upon the Defendant on January 29, 2010; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of Judgment by Default by application or affidavit filed with this Court on July 28, 2010 and that the Clerk of Court has certified and entered the Fact of Default on August 5, 2010 pursuant to Rule 7055(a) of the Federal Rules of Bankruptcy Procedure.

### CONCLUSIONS

The Plaintiff is entitled under applicable law to entry of Judgment by Default.

### RECOMMENDATION

**WHEREFORE**, it is hereby recommended that the District Court award Judgment by Default to the Plaintiff and against Defendant in the total amount of \$ 144,443.43 (plus the allowed per diem amount of \$ 0.00 from the application for default), which amount is fully itemized in the attached "Affidavit of Amount Due (Non-Core Proceeding)" (Suggested Form D105) duly sworn to by Plaintiff's attorney or Plaintiff pro se and dated July 28, 2010.

Date: AUG - 5 2010

  
\_\_\_\_\_  
United States Bankruptcy Judge

